

if the miner is still engaged in underground coal mining and if the second radiograph shows evidence of category 1 ( $\frac{1}{10}$ ,  $\frac{1}{4}$ ,  $\frac{1}{2}$ ), category 2 ( $\frac{2}{4}$ ,  $\frac{2}{2}$ ,  $\frac{2}{3}$ ), category 3 ( $\frac{3}{2}$ ,  $\frac{3}{3}$ ,  $\frac{3}{4}$ ) simple pneumoconioses, or complicated pneumoconioses (ILO Classification).

(c) NIOSH will notify the miner when he or she is due to receive the second or third mandatory examination under (b) of this section. Similarly, NIOSH will notify the coal mine operator when the miner is to be given a second examination. The operator will be notified concerning a miner's third examination only with the miner's written consent, and the notice to the operator must not state the medical reason for the examination nor that it is the third examination in the series. If the miner is notified by NIOSH that the third mandatory examination is due and the operator is not so notified, availability of the radiographic examination under the Coal Mine Operator's Plan (Form CDC/NIOSH (M)2.10) will constitute the operator's compliance with the requirement to provide a third mandatory examination even if the miner refuses to take the examination.

(d) The opportunity for chest radiographs to be available by an operator for purposes of this subpart must be provided in accordance with a plan that has been submitted and approved in accordance with this subpart.

[77 FR 56726, Sept. 13, 2012]

#### **§ 37.4 Plans for chest roentgenographic examinations.**

(a) Every plan for chest radiographic examinations of miners must be submitted on the Coal Mine Operator's Plan form (Form CDC/NIOSH (M)2.10) to NIOSH within 120 calendar days after August 1, 1978. In the case of a person who after August 1, 1978, becomes an operator of a mine for which no plan has been approved, that person must submit a plan within 60 days after such event occurs. A separate plan must be submitted by the operator and by each construction contractor for each underground coal mine that has a MSHA identification number. The plan must include:

(1) The name, address, and telephone number of the operator(s) submitting the plan;

(2) The name, MSHA identification number for respirable dust measurements, and address of the mine included in the plan;

(3) The proposed beginning and ending date of the 6-month period for voluntary examinations (see § 37.3(a)), the estimated number of miners to be given or offered examinations during the 6-month period under the plan, and a roster specifying the names and current home mailing addresses of each miner covered by the plan;

(4) The name and location of the approved X-ray facility or facilities, and the approximate date(s) and time(s) of day during which the radiographs will be given to miners to enable a determination of whether the examinations will be conducted at a convenient time and place;

(5) If a mobile facility is proposed, the plan shall provide that each miner be given adequate notice of the opportunity to have the examination and that no miner shall have to wait for an examination more than 1 hour before or after his or her work shift. In addition, the plan shall include:

(i) The number of change houses at the mine.

(ii) One or more alternate nonmobile approved facilities for the reexamination of miners and for the mandatory examination of miners when necessary (see § 37.3(b)), or an assurance that the mobile facility will return to the location(s) specified in the plan as frequently as necessary to provide for examinations in accordance with these regulations.

(iii) The name and location of each change house at which examinations will be given. For mines with more than one change house, the examinations shall be given at each change house or at a change house located at a convenient place for each miner.

(6) The name and address of the A or B Reader who will interpret and classify the chest radiographs. In the event a plan lists an approved facility with a digital radiography system, the name and address of the physician(s) who will perform the initial clinical interpretation.

(7) Assurances that:

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(i) The operator will not solicit a physician's radiographic or other findings concerning any miner employed by the operator,

(ii) Instructions have been given to the person(s) giving the examinations that duplicate radiographs or copies of radiographs (including, for digital radiographs, copies of electronic files) will not be made, and to the extent that it is technically feasible for the imaging system used, digital radiographs and all related digital files must be permanently deleted from the facility records or rendered permanently inaccessible following the confirmed transfer of such data to NIOSH, and that (except as may be necessary for the purpose of this subpart) the physician's radiographic and other findings, as well as the occupational history information obtained from a miner will not be disclosed in a manner that would permit identification of the individual with their information, and

(iii) The radiographic examinations will be made at no charge to the miner.

(b) Operators may provide for alternate facilities and "A" or "B" readers in plans submitted for approval.

(c) The change of operators of any mine operating under a plan approved pursuant to § 37.5 shall not affect the plan of the operator which has transferred responsibility for the mine. Every plan shall be subject to revision in accordance with paragraph (d) of this section.

(d) The operator must advise NIOSH of any change in its plan. Each change in an approved plan is subject to the same review and approval as the originally approved plan.

(e) The operator must promptly display in a visible location on the bulletin board at the mine its proposed plan or proposed change in plan when it is submitted to NIOSH. The proposed plan or change in plan must remain posted in a visible location on the bulletin board until NIOSH either grants or denies approval of it at which time the approved plan or denial of approval must be permanently posted. In the case of an operator who is a construction contractor and who does not have a bulletin board, the construction contractor must otherwise notify its employees of the examination arrange-

ments. Upon request, the contractor must show NIOSH written evidence that its employees have been notified.

(f) Upon notification from NIOSH that sufficient time has elapsed since the previous period of examinations, the operator will resubmit its plan for each of its coal mines to NIOSH for approval for the next period of examinations (see § 37.3(a)(2)). The plan must include the proposed beginning and ending dates of the next period of examinations and all information required by paragraph (a) of this section.

[43 FR 33715, Aug. 1, 1978; 43 FR 38830, Aug. 31, 1978; 77 FR 56727, Sept. 13, 2012]

### § 37.5 Approval of plans.

(a) If, after review of any plan submitted pursuant to this subpart, the Secretary determines that the action to be taken under the plan by the operator meets the specifications of this subpart and will effectively achieve its purpose, the Secretary will approve the plan and notify the operator(s) submitting the plan of the approval. Approval may be conditioned upon such terms as the Secretary deems necessary to carry out the purpose of § 203 of the Act.

(b) Where the Secretary has reason to believe that he or she will deny approval of a plan the Secretary will, prior to the denial, give reasonable notice in writing to the operator(s) of an opportunity to amend the plan. The notice must specify the ground upon which approval is proposed to be denied.

(c) If a plan is denied approval, the Secretary must advise the operator(s) in writing of the reasons for the denial.

[77 FR 56728, Sept. 13, 2012]

### § 37.6 Chest roentgenographic examinations conducted by the Secretary.

(a) The Secretary will give chest radiographs or make arrangements with an appropriate person, agency, or institution to give the chest radiographs and with A or B Readers to interpret the radiographs required under this subpart in the locality where the miner resides, at the mine, or at a medical facility easily accessible to a mining community or mining communities, under the following circumstances: